

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF HUMAN SERVICES

In the Matter of the Temporary Immediate Suspension of the Family Child Care License of Laura Guyton	FINDINGS OF FACT, CONCLUSIONS, AND RECOMMENDATION
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This matter came on for hearing before Administrative Law Judge Kathleen D. Sheehy on January 6, 2011, in the Hennepin County Health Services Building, Room 111, 525 Portland Avenue, Minneapolis, MN 55415. The record closed at the conclusion of the hearing that day.

Frederic S. Stephens, Assistant Hennepin County Attorney, 525 Portland Avenue South, Minneapolis, Minnesota 55415, appeared on behalf of Hennepin County Human Services and Public Health Department (County) and the Minnesota Department of Human Services (Department). Laura Guyton (Licensee) appeared on her own behalf without counsel.

STATEMENT OF ISSUE

Should the temporary immediate suspension of the family child care license of Laura Guyton remain in effect because there is reasonable cause to believe that there is an imminent risk of harm to the health, safety, or rights of children in her care?

The Administrative Law Judge concludes that there is there is reasonable cause to believe that there is an imminent risk of harm to the health, safety, or rights of children in Licensee's care and recommends that the Commissioner affirm the order of temporary immediate suspension.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Laura Guyton has been a licensed provider of family child care since 1995. She lives with her teen-age daughter in Richfield, Minnesota. Guyton and her husband have been separated for 11 years, but they are not divorced. Guyton volunteers with an organization called Circle of Discipline, which operates a nonprofit boxing club for at-risk youth.¹

¹ Testimony of Laura Guyton; Ex. 8 at 2.

2. In August 2009, Licensee began a dating relationship with a man, E.G.S., who lived in Milwaukee. E.G.S. has a 15-year-old son, E.G.J., who also lived in Milwaukee. Guyton and E.G.S. saw each other on weekends.²

3. On or about March 12, 2010, Guyton was in Milwaukee visiting E.G.S. During this visit, the couple became aware that E.G.J.'s cousin, an eight-year-old boy, had alleged that E.G.J. had engaged in anal intercourse with the boy.³

4. When Guyton returned home to Richfield on March 14, 2010, E.G.J. came with her. He lived in her home and attended Richfield High School through the end of the school year. Although E.G.J. was usually at school during daycare hours, there were occasions when he was home during daycare hours.⁴ There is no evidence he was there without adult supervision.

5. On May 28, 2010, E.G.J. was charged in Milwaukee County Juvenile Court with five counts of first-degree criminal sexual conduct.⁵

6. In June 2010, Hennepin County Child Protection investigated an incident of inappropriate sexual touching between two daycare children (a four-year-old boy and a girl) in Guyton's home. Guyton had reported the incident to the parents. It is unclear how Child Protection became involved, but licensing authorities were not notified of the incident or of the investigation. As a result of the incident, Guyton advised the four-year-old boy's parents she would not provide daycare for him any longer.⁶

7. On June 23, 2010, E.G.J. returned to Milwaukee for a court appearance, and he was taken into custody.⁷

8. Between March 14, 2010, and June 23, 2010, Guyton was operating a daycare at her home. Hennepin County has no record that she advised her licensing worker or anyone else of a change in her household membership during this period. Guyton did not advise daycare parents that E.G.J. was living in the home, or of the circumstances that led to him living in the home.⁸

9. On July 29, 2010, the Milwaukee County Juvenile Court released E.G.J. to live in his father's home, which was identified as Guyton's address in Richfield. E.G.J. was required to have no unsupervised contact with children 12 years and under and was not allowed to babysit for children. He was subject to telephone monitoring twice a day and monitoring by Skype once a week.⁹

² Test. of L. Guyton; Testimony of Gregory Hrnčírik.

³ Ex. 8 at 2; Test. of L. Guyton.

⁴ Test. of L. Guyton; Test. of G. Hrnčírik.

⁵ Exs. 2 and 9; Test. of L. Guyton.

⁶ Testimony of Tim Hennessey.

⁷ Test. of L. Guyton; Ex. 9.

⁸ Testimony of Anisa Nur; Test. of G. Hrnčírik; Ex. 8 at 11-12.

⁹ Ex. F; Ex. 9; Test. of L. Guyton.

10. E.G.J. returned to live with Guyton, although his father did not. He enrolled in school again and began attending football practice. Some time in mid-to-late-August, Guyton posted a notice on a dry-erase board in her home advising parents that E.G.J. was living there and was involved in a legal case in Milwaukee. Guyton discussed the legal issues with any parent who inquired about the notice and asked for more information.¹⁰

11. On September 30, 2010, Tim Hennessey from Hennepin County Licensing visited Guyton at her home to investigate an unrelated complaint made by a daycare parent. In addition, he had learned of the child protection investigation in June 2010, and he wanted to ask Guyton about the circumstances of that incident. During this visit, Guyton did not disclose to Hennessey that E.G.J. was currently living in her home and had been there between March and June.¹¹

12. In November 2010, a series of juvenile court hearings on the criminal charges began in Milwaukee. On November 15, 2010, during a hearing, prosecutors discovered that Guyton operated a daycare program in her home. The Juvenile Court then placed E.G.J. in a temporary shelter in Wisconsin.¹²

13. On or about November 23, 2010, a prosecuting attorney in Milwaukee contacted the Department with information that Guyton had permitted an alleged sex offender to reside in her daycare home.¹³ The Department contacted Hennepin County licensing workers to initiate an investigation. Licensing workers verified through public assistance records that E.G.J. had resided in Guyton's home from March through November. The County recommended a temporary immediate suspension of Guyton's family child care license.¹⁴

14. On November 24, 2010, the Department issued a temporary immediate suspension of Guyton's family child care license. Guyton appealed it the same day.¹⁵

15. On November 25, 2010, Hennepin County Child Protection commenced an investigation of whether Guyton had neglected children in care by allowing an alleged sex offender to live in the home and have contact with daycare children.¹⁶

16. The Department requested assignment of an administrative law judge on November 29, 2010, and on December 1, 2010, served by U.S. mail the Notice and Order for Hearing in this matter.

17. On or about December 6, 2010, E.G.J. was released from the temporary shelter and is currently residing with an older sibling in Milwaukee.¹⁷

¹⁰ Test. of L. Guyton; Testimony of Teresa Armstrong; Testimony of Tameka Newton.

¹¹ Test. of T. Hennessey.

¹² Ex. 9; Ex. A.

¹³ Ex. 2.

¹⁴ Exs. 1, 2, 3, and 4.

¹⁵ Exs. 5 and 6.

¹⁶ Ex. 8.

18. The hearing in this matter was originally scheduled to take place on December 15, 2010. On the morning of December 15, 2010, Guyton contacted the Administrative Law Judge by telephone to request that the hearing be continued. She said she had just returned from Milwaukee and needed more time to prepare. Based on her request, the Administrative Law Judge rescheduled the hearing to take place on January 6, 2011.

19. On December 20, 2010, Hennepin County Child Protection determined maltreatment by neglect, considered it serious and recurring and notified her that she was disqualified. Guyton has asked for reconsideration of the maltreatment determination and disqualification decision, but the County has not yet acted on her request.¹⁸

20. The criminal trial of E.G.J. has not concluded, but is expected to end in late-January 2011.¹⁹

Based on the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Commissioner of Human Services and the Administrative Law Judge have jurisdiction to consider this matter pursuant to Minn. Stat. §§ 245A.07, subd. 2a, and 14.50.

2. The Department gave proper and timely notice of the hearing and has fulfilled all procedural requirements of law and rule.

3. A background study is required for each individual age 13 and over living in the household where the licensed program will be provided, and for each individual who may have unsupervised access to the children in the licensed program.²⁰

4. A licensed provider is required to report to licensing authorities, within 30 days, any change in the regular membership of the daycare household.²¹

5. If a license holder's actions or failure to comply with applicable law or rule, or the actions of other individuals or conditions in the program pose an imminent risk of harm to the health, safety, or rights of persons served by the program, the Commissioner shall act immediately to temporarily suspend the license.²²

6. If a license holder appeals an order immediately suspending a license, the Commissioner shall request assignment of an administrative law judge within five

¹⁷ Ex. 9.

¹⁸ Ex. 10; Test. of G. Hrnclrik; Test. of L. Guyton.

¹⁹ Ex. 9.

²⁰ Minn. Stat. § 245A.03, subd. 1.

²¹ Minn. R. 9502.0375, subp. 2.

²² Minn. Stat. § 245A.07, subd. 2

working days of receipt of the license holder's timely appeal. A hearing must be conducted within 30 calendar days of the request for assignment.²³

7. The scope of the hearing shall be limited solely to the issue of whether the temporary immediate suspension should remain in effect pending the commissioner's final order under § 245A.08, regarding a licensing sanction issued under subdivision 3 following the immediate suspension.²⁴

8. The burden of proof in expedited hearings on a temporary immediate suspension shall be limited to the Commissioner's demonstration that reasonable cause exists to believe that the license holder's actions or failure to comply with applicable law or rule poses an imminent risk of harm to the health, safety, or rights of persons served by the program.²⁵ "Reasonable cause" means there exist specific articulable facts or circumstances which provide a reasonable suspicion that there is an imminent risk of harm to the health, safety, or rights of persons served by the program.²⁶

9. The Commissioner has demonstrated that there is reasonable cause to believe that the license holder has either acted or failed to act in compliance with the law such that she poses an imminent risk of harm to the health, safety, or rights of persons served by the program.

Based upon the foregoing Conclusions of Law, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Commissioner of Human Services AFFIRM the temporary immediate suspension of Laura Guyton's family child care license.

Dated: January 19, 2011

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

Reported: Digitally recorded (no transcript prepared)

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Human Services (Commissioner) will make the final decision after a review of the record

²³ Minn. Stat. § 245A.07, subd. 2a(a).

²⁴ *Id.*

²⁵ *Id.*

²⁶ 2010 Minn. Laws, ch. 329, art. 1, § 7.

and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation. Under Minn. Stat. §§ 14.61 and 245A.07, subd. 2a (b), the parties adversely affected have ten (10) calendar days to submit exceptions to this Report and request to present argument to the Commissioner. The record shall close at the end of the ten-day period for submission of exceptions. The Commissioner then has ten (10) working days from the close of the record to issue her final decision. Parties should contact Lucinda Jesson, Commissioner of Human Services, Box 64998, St. Paul MN 55155, (651) 431-2907, to learn the procedure for filing exceptions or presenting argument.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

In November 2010, Laura Guyton reported to a child protection investigator that she had advised Hennepin County Licensing by telephone in March 2010 that E.G.J. had moved into her home. Her testimony is unsupported by her licensing worker or any documentation in her licensing file. Moreover, during the hearing, Guyton contradicted this statement by testifying that she did not contact anyone between March and June 2010 because E.G.J. had not been charged with any crime and there was nothing to report. She agreed it was not disclosed during Tim Hennessey's visit in September 2010. She also said she planned to disclose E.G.J.'s residency at the time of relicensing in October 2010.

The child protection investigation reflects that parents had varying degrees of knowledge about the criminal charges. Some of them did not learn about the situation at all until November or December 2010. In addition, Guyton may have permitted E.G.J. to babysit for a daycare child, although the circumstances are not clear. Moreover, the County maintained during the hearing that Guyton had failed to submit background studies on two persons she identified as helpers in the daycare. Although Guyton disagreed with this assertion, this remains an open issue.

Guyton is highly loyal to E.G.J. and his father. She may have had good motives in attempting to help E.G.J. through what is clearly a difficult time, but her loyalty impaired her judgment in failing to timely disclose the circumstances of his presence in her home to daycare parents and licensing authorities. The temporary immediate suspension should continue until a final licensing action is taken by the Department.

K. D. S.